

**Brookline Board of Appeals
June 23, 2016, 7:00 PM
Public Meeting & Hearing**

**333 Washington Street
6th Floor Selectmen's hearing Room**

Board Members Present – Mark Zuroff (Chairman), Johanna Schneider, Christopher Hussey,

Staff Present – Michael Yanovitch (Build. Dept.), Polly Selkoe (Planning Dept.), Ashley Clark (Planning Dept.)

7:00PM

420 Warren Street: Attach existing garage to the principle structure

Board Chairman Zuroff opened the hearing and called case #2016-0034. Mr. Zuroff reviewed standard hearing procedure.

Attorney Jacob Walters (27 Harvard Street, Brookline, MA) waived the reading of public hearing notice for the record and described the application to create two small additions to attach the garage to the dwelling. Attorney Walters reviewed why the project meets the requirements for a special permit under the town's zoning bylaw. Mr. Walters argued the proposed addition would cause no detriment to the neighborhood and have not received any negative responses. Further, Mr. Walters stated the applicant had no issues with the conditions from the Planning Board.

Board Chairman Zuroff inquired if there had been prior applications for this property to expand its FAR. Ms. Selkoe from the Planning Department as well as Attorney Walters stated there were no prior applications for FAR expansion to their knowledge.

Board Chairman Zuroff called for public comment in favor of, or in opposition to, the Petitioner's proposal.

There was no public comment.

Board Chairman Zuroff called upon Assistant Director Polly Selkoe from the Planning Department to review the findings of the Planning Board. Ms. Selkoe stated the Planning Board was in support of this proposal and do not think there will be any adverse impact on the surrounding neighborhood. The mud room addition does not change the setback of the garage. For those reasons the Planning Board felt special permit relief was appropriate.

Therefore, the Planning Board recommends approval of the site plan by Peter Nolan, dated 3/25/2016, and floor plans and elevations by Doreve Nicholaeff, dated 3/15/2016, subject to the following conditions:

1. Prior to the issuance of a building permit, the Applicant shall submit a final site plan, floor plans, and elevations that include final roof plans, subject to review and approval by the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, the Applicant shall submit a final landscape plan indicating all counterbalancing amenities, subject to review and approval by the Assistant Director for Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision:
1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Board Chairman Book requested that Deputy Building Commissioner Michael Yanovitch review the findings of the Building Department. Mr. Yanovitch stated that the Building Department has no objection to the relief requested as the FAR is within what is allowed by special permit. The garage is nonconforming only because it is now being attached to principle structure.

Board Deliberation

Board Member Hussey felt this is a straightforward addition that benefits the house and meets the requirements for a special permit.

Board Member Schneider cited the reasons Ms. Selkoe articulated as to why this proposal is worthy of the relief sought.

Chairman Zuroff was in agreement with Board Members Schneider and Hussey to grant the zoning relief as requested.

Unanimous Board grant of requested relief, subject to conditions stated for the record.

808 Commonwealth Avenue- Construct a 75,000 square foot theater

Chairman Mark Zuroff opened the hearing and called case #2016-0039.

Walt Meissner, Associate VP of Operations, waived a reading of public hearing notice for the record and introduced the project team:

- Architect: Howard Elkus, Elkus Manfredi
- Landscape Architect: Mikyoung Kim
- Transportation Engineer: Giles Ham, Vanasse Engineering
- Real Estate Attorney: Marilyn Sticklor, Goulston & Storrs

Members of the project team presented the components of the plan.

Mr. Meissner discussed the theatre program and its relocation. Mr. Meissner presented the general overview of the proposed project, site planning, landscape design, traffic and parking, and special permit findings.

Board Member Schneider confirmed the applicant will be legally merging the lots into one lot.

The board discussed the rear lot setback and the parking available to the public during performances. The project team stated 80 parking spaces would be needed for a full-performance in a theater seating 250. Board Member Hussey confirmed these spaces would be available for public use during events held at the theatre.

Board Chairman Zuroff called for public comment in favor of, or in opposition to, the Petitioner's proposal.

Cynthia Snow, Chair Brookline Bicycle Advisory Committee, stated that while she appreciated the safety of cyclists taken into consideration thus far, it was important to note that cyclists use Essex Street heavily. Ms. Snow felt due to potential increased vehicular traffic due to the project there should be an effort to offset the impact by increasing bicycle safety. Ms. Snow referenced a memo she submitted to the board outlining specifically the safety features that should be considered.

Gillian Jackson (Administrator, Brookline Commission of the Arts) and **Betsy Frauenthal** (Director of Brookline Music School) spoke on behalf of the community programming agreement with Boston University (BU). Ms. Jackson and Ms. Frauenthal were concerned over the vagueness of the terms of the community use program. They would like to address in greater specificity the number of times the theatre may be used as well as the length of time. Ms. Jackson stated she understood the concerns BU may have with agreeing to specific terms and proposed creating a joint committee with the BU Theatre Department to create a system where events are approved and deemed suitable for the space.

Board Member Schneider asked about the five year term agreement.

Mr. Meissner explained the five-year agreement proposed is a precedent they have set with all organizations they work with. The intention of setting a date for renewal and review is to create an opportunity to have a conversation with the organization and discuss how the agreement is going. The theatre program is interested in engaging the community on a number of levels. Mr. Meissner further stated they plan on utilizing the theatre intensively and the students in the program have priority. For now BU is unsure of what flexibility they will have in available use of the theatre.

Chairman Zuroff requested that the Assistant Director, Polly Selkoe review the findings of the Planning Board design advisory team (DAT). Ms. Selkoe stated both the DAT and Planning Board are excited about the proposal and design. However, Ms. Selkoe further explained, the Planning Board recommended strongly that issues be worked out with the art community before the hearing tonight. Ms. Selkoe suggested BU and the art community consider language that sets a minimum number of times a community group can use the space per year, and if space is available, allow the community to use it more. Further, BU is requesting relief and there should be appropriate counterbalancing amenities.

Ms. Selkoe concluded by stating the Planning Board felt the proposed buildings provide an appropriate transition from Commonwealth Avenue to the Cottage Farm neighborhood and should help block traffic noise from Commonwealth Avenue.

Therefore, the Planning Board recommends approval of the site plan and architectural plans by Elkus/Manfredi, dated April 8, 2016, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, including the parking lay-out and location of all utilities, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit final floor plans and elevations, including rooftop structures and screening, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall submit a final landscaping and fencing plan, subject to the review and approval of the Assistant Director of Regulatory Planning. The applicant shall also submit a plan for replacement of street trees on Dummer Street down to Amory Street, subject to the review and approval of the Tree Warden and the Assistant Director of Regulatory Planning.
4. Prior to the issuance of a building permit, the applicant shall submit a final Construction Management Plan, including access and parking of construction vehicles, a dust and rodent control plan, waste disposal, and details regarding demolition, subject to the review and approval of the Building Commissioner and Director of Transportation and Engineering, with a copy to the Planning and Building Departments.
5. Prior to the issuance of a building permit, the applicant shall submit a final Transportation Demand Management Plan, subject to the review and approval of the Director of Transportation and Engineering, with a copy to the Planning and Building Departments.
6. Prior to the issuance of a building permit, the applicant shall submit a plan for a bike path or track on Essex Street as well as Dummer Street, if feasible, subject to the review and approval of the Director of Transportation and Engineering.
7. Prior to the issuance of a building permit, the applicant shall submit a final Drainage and Stormwater Plan, subject to the review and approval of the Director of Transportation and Engineering.
8. Prior to the issuance of a building permit, the applicant as an amenity to the Town, shall submit a plan outlining a set of proposed community partnership initiatives for Brookline community and local artists groups to be able to use the theatre and support facility when it is available, subject to the approval of the Assistant Director of Planning.
9. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Marilyn Sticklor submitted to the ZBA handwritten edits to the proposed conditions.

5. Prior to the issuance of a ~~building permit~~ Certificate of Occupancy, the applicant shall submit a final Transportation Demand Management Plan, subject to the review and approval of the Director of Transportation and Engineering, with a copy to the Planning and Building Departments.
 - Neither the Planning nor Building Department had any objections.
6. Prior to the issuance of a ~~building permit~~ Certificate of Occupancy, the applicant shall submit a plan for a bike path or track on Essex Street as well as Dummer Street, if feasible, subject to the review and approval of the Director of Transportation and Engineering.
 - Neither the Planning nor Building Department had any objections.
 - Ms. Sticklor was comfortable with this based upon the prior discussion.
8. Prior to the issuance of a ~~building permit~~ Certificate of Occupancy, the applicant as an amenity to the Town, shall submit a plan outlining a set of proposed community partnership initiatives for Brookline community and local artists groups, including to be able to use the theatre and support facilities when it is ~~available~~ not used by applicant with the goal of making such facilities available to the Brookline community and local artists groups with the goal at least 6 times per year, subject to the approval of the Assistant Director of Planning.
 - The applicant agreed to submit a formal community plan.

Chairman Zuroff requested that Deputy Building Commissioner Michael Yanovitch deliver the opinion of the Building Department. Mr. Yanovitch stated the Building Department does not have an issue with the requested relief. Mr. Yanovitch stated the DAT has taken care of any outstanding issues in regards to the design, setback and density.

Board Deliberation

Board Member Schneider stated this is a very thoughtfully designed project, and appreciated the fact the design respects two very different contexts. The urban front of the building is on Commonwealth Avenue, and the architecture and landscaping are designed in a way that respects the residential neighborhood. The parking and circulation is very well thought out and designed in a way that minimizes impact on the neighborhood. Board Member Schneider felt the relief should be granted under Section 5.08 (2) because educational use is different than other uses, and felt the board should utilize it to the extent that is available under the bylaw.

Board Member Hussey concurred with Board Member Schneider that it meets conditions of special permits and agrees Section 5.43 is not necessary to grant the relief requested.

Board Member Zuroff appreciated the amount of effort that went into design and felt the entire project is a counter balancing amenity. The presentation by BU justified Section 5.08 and meets the requirements with the changes that have been negotiated.

Mr. Zuroff therefore stated there was unanimous grant of the relief requested with recommended Planning Board conditions as amended:

5. Prior to the issuance of a Certificate of Occupancy the applicant shall submit a final Transportation Demand Management Plan, subject to the review and approval of the Director of Transportation and Engineering, with a copy to the Planning and Building Departments.
6. Prior to the issuance of a Certificate of Occupancy, the applicant shall submit a plan for a bike path or track on Essex Street as well as Dummer Street, if feasible, subject to the review and approval of the Director of Transportation and Engineering.
8. Prior to the issuance of a Certificate of Occupancy, the applicant as an amenity to the Town, shall submit a plan outlining a set of proposed community partnership initiatives for Brookline community and local artists groups, including to be able to use the theatre and support facilities when it is not used by applicant with the goal of making such facilities available to the Brookline community and local artists groups with the goal at least 6 times per year, subject to the approval of the Assistant Director of Planning.

111 Marion Street: Demolish existing building and construct a four-story building with three residential units and parking below

Chairman Zuroff opened the hearing and called case # 2016-0027 and reviewed standard hearing procedure.

Attorney Scott Gladstone (1244 Boylston Street, Chestnut Hill, MA) introduced the Petitioner Nicole Forest and Architect Kent Duckham. Attorney Gladstone waived a reading of public hearing notice for the record. Mr. Gladstone stated why they are seeking zoning relief to construct a four-story building at 111 Marion Street, and presented a background of the property. Mr. Gladstone then discussed the zoning relief required from the Board of Appeals.

Nicole Forest presented the design and explained how they arrived at the smaller garage after recommendations from the Planning Board.

Attorney Gladstone argued for why the design should be granted special permit relief and variance. Mr. Gladstone described the surrounding conditions of 111 Marion. Counterbalancing amenities are required by 5.43 in the bylaw and Mr. Gladstone argued by stepping the building down and back it provides more open space. Further, they have applied to utilities to put wires underground, which would also be an improvement. Mr. Gladstone described the current conditions as having no landscaping, and the applicant plans to hide the parking and provide nice landscaping. Mr. Gladstone described the shape of the land and irregular lot lines, which meets the standard for a variance.

Attorney Gladstone argued the ZBA has the power to approve the Petitioner's proposal by granting a variance from the F.A.R. and parking requirements of the Zoning by-law if it finds that due to circumstances relating to the soil conditions, shape or topography of the land but not effecting

generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or bylaw would involve substantial hardship, financial or otherwise. Further, Mr. Gladstone argued the consistency of the building structure with the surrounding neighborhood will not have adverse impacts or be a nuisance.

Chairman Zuroff called for public comment in favor of, or in opposition to the Petitioner's proposal.

Jonathan Davis, 125 Park Street and Town Meeting Member from precinct 10, stated the area is short of overnight parking and was concerned this project will exacerbate the problem. Mr. Davis asked if the Board can instead give a variance to allow for fewer units.

Lauren Shore, 88 Marion Street, stated her building was shorter than the other buildings presented and described the sight lines from her building. Ms. Shore was concerned about the proposed parking compounding the issue further. Ms. Shore also suggested a variance be granted for a smaller building.

Attorney Jacob Walters, retained by the owner of an abutting property on Beacon Street, described his client's concern regarding the rear yard of the daycare as an emergency exit, the size and height of the building as it will negatively impact the backyard. Attorney Walters stated a variance under Section 5.07 does not provide relief for FAR. Mr. Walters argued the variance argument does not hold with reference to FAR and shape of the lot therefore he does not think the standards are met.

Attorney Gladstone stated he has been reaching out to Attorney Walter's client for months to discuss his concerns. Mr. Gladstone stated that a use variance is not available because Section 9.09 requires additional requirements that they do not meet. Further, Mr. Gladstone stated in regards to a comment about the removal of rented parking spaces, that if they are being rented out it is not being done so legally.

Chairman Zuroff requested that Assistant Director Polly Selkoe review the findings of the Planning Board. Ms. Selkoe gave a history of the site and described the difficulty previous applicants have experienced in trying to develop the lot. Ms. Selkoe stated the Planning Board felt the requirements for variance had been met due to the peculiar shape of the lot. The Planning Board felt the original proposal with two garages on the front were not safe and asked the applicant to reduce the parking as well as the bulk of the building as they felt the FAR was excessive. The garage has been moved back 2.5 feet off the property line and parking reduced, addressing the concern with the proposed garage. Ms. Selkoe stated a construction management plan should be required.

The Planning Board recommends approval of the site plan dated 5/19/2016 and the architectural plans by registered architect Kent Duckham, dated 5/17/2016 subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final site plan, floor plans and elevations subject to the review and approval of the Assistant Director of Regulatory Planning. Any conflict in the plans with the state building code may be revised.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscape plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director of Regulatory Planning.

3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision:
1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Zuroff requested that Deputy Building Commissioner Michael Yanovitch review the findings of the Building Department. Mr. Yanovitch agreed that a use variance was not available for this project. Mr. Yanovitch reported the Building Department was in support of this project.

Board Deliberation

Chairman Zuroff stated the board interprets the law carefully and is reluctant to grant variances. Mr. Zuroff stated there is uniqueness to the size and shape of the site and existing physical conditions require work to be done. Mr. Zuroff stated Section 5.07 does not grant F.A.R relief.

Board Member Hussey stated the nature of the lot is impacted by the triangular shape as well as the size which makes it difficult. Mr. Hussey stated he was concerned about any garage on this property due to safety issues, especially since there is a day care nearby.

After considerable discussion related to the parking requirements, there was a consensus the parking requirements in place are excessive. The board felt the site was unbuildable without some relief. There was consensus this contributed to the hardship argument as it is required for the granting of a variance.

Board Member Schneider stated there were some good things on this project and felt it was an appropriate site for a denser development. Ms. Schneider stated there is still too much tandem parking which contributes to a concern over visibility and safety.

Board Chairman Zuroff stated he would like to see something redeveloped on this site and felt it would benefit the area if it were improved. Mr. Zuroff felt the variance argument was tenuous and asked if the applicant would be willing to get support from their abutter, especially in regards to their concern over traffic safety.

Attorney Gladstone stated they would be agreeable to any various special condition solutions to address the traffic safety concern. Mr. Gladstone agreed that there are ways it can be made safer and they are happy to have condition to work with Traffic Engineering Department to come up with safety regulations.

The board discussed lowering the parking requirement and finding a solution other than tandem parking. Board Member Schneider was specifically concerned about the proposed two sets of tandem parking on a busy street and suggested lowering the parking spaces to two stalls. Board Member Hussey agreed that a reduction in parking to two cars and with adequate safety measures put into place he would be comfortable. Ms. Forrest was amenable to reducing the parking down to two.

Chair Member Zuroff noted that there were public comments made that parking requirements should remain high but felt due to the project's proximity to public transit it would be appropriate to permit fewer spaces. Mr. Zuroff noted that they have allowed for two parking spaces with the proviso that the applicant work with traffic and construction management program so the easement remains available and to work with the abutter on managing how to keep it open during construction.

The Board of Appeals voted unanimously to grant the requested relief subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans and elevations, with materials indicated, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall submit a construction management plan, subject to the review and approval of the Assistant Director of Regulatory Planning.
4. Prior to the issuance of a certificate of occupancy, the applicant shall submit a plan to enhance pedestrian safety in front of the garage, such as a visible alert when cars are backing out of the garage, subject to review and approval of the Engineering/Transportation Director.
5. Parking shall be reduced to maximum of two spaces, not tandem.
6. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision:
1) a final site plan stamped and signed by an engineer or land surveyor, 2) final building elevations and floor plans stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.